

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

<b>JOHN G. PEDICINI,</b>	)	
	)	
<b>Plaintiff</b>	)	<b>Civil Action No.</b>
	)	<b>04-12395-JLT</b>
<b>-v-</b>	)	
	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>PLAINTIFF'S MOTION FOR</b>
<b>UNITED STATES OF AMERICA, et al.</b>	)	<b>PROTECTIVE ORDER</b>
	)	
<b>Defendants</b>	)	
	)	
	)	

The Privacy Act of 1974 5 U.S.C. 552 protects from discovery Agency Records except, under part (b) of the Privacy Act, to those individuals who are members of the Agency who have a need for the record in the performance of their duties or pursuant to a Court order.

In this case, Plaintiff possesses the documents listed in the Affirmation of Robert S. Catapano-Friedman attached with this Memorandum.

Counsel for Plaintiff believes that Counsel for Defendants, although not a member of the EEOC or USDA, has a need for these records and documents, since they all bear relevance to the litigation at hand. They are relevant to Plaintiff's allegations of retaliation based on his participation in protected activities, such as serving as an EEO representative and

testifying as a witness, to Plaintiff's future amended allegation of retaliation based on the First Amendment, to Plaintiff's allegations of non-compliance with an order from the USDA regarding his Settlement Agreement with the USDA, and Defendants' defenses.

Plaintiff believes that it is not a violation of the Privacy Act to disclose these documents to Defendants' Attorney since Defendants' Attorney should already have access to these records by virtue of his relationship with his clients. However, Defendants' Attorney has expressed some uncertainty on this issue and our review of the relevant case law does not clearly establish that these documents can be produced in these proceedings by Plaintiff in the absence of an express order by this Court.

Because most of these documents (numbering 1960 pages and labeled by Plaintiff as P-1 through P-1960) relate to either Plaintiff's employment at FNS-NERO, investigations into complaints by FNS-NERO employees, information, complaints and statements given to the EEOC and USDA Department of Civil Rights by FNS employees, or documents such as spreadsheets or funds certifications which are possibly on record at USDA-FNS, these documents are or may be covered by the Privacy Act, and are or may be entitled to appropriate protection.

Accordingly, counsel for Plaintiff requests that this Court

order Plaintiff to produce the above documents to Defendants with a Protective Order limiting their use only to this civil action.

WHEREFORE, Plaintiff prays this court order these documents produced and protected.

Dated: February 28, 2005

s/Robert S. Catapano-Friedman  
Robert S. Catapano-Friedman  
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